

## **HUMAN RIGHTS COMMISSION:**

In Its Contract With the Public  
Utilities Commission, the Joint  
Venture of CET Environmental  
Services, Inc./Gabewell Did  
Not Fully Meet the Objectives  
for Participation by Minority or  
Women Business Enterprises

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Audit Number 01069  
February 4, 2003

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Edward Harrington  
Controller

Monique Zmuda  
Deputy Controller

February 4, 2003

Audit Number 01069

Public Utilities Commission  
1155 Market Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

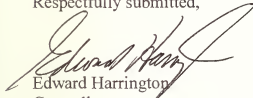
President and Members:

The Office of the Controller presents its audit report concerning the contract for CET/Gabewell, a Joint Venture Association, (CET/Gabewell) to provide as-needed specialized engineering services to the Public Utilities Commission of the City and County of San Francisco. To comply with the San Francisco Administrative Code, we conducted this audit to verify whether CET/Gabewell met its commitment to subcontract with minority business enterprise (MBE) and women business enterprise (WBE) companies.

Our audit revealed that CET Environmental Services, Inc., (CET) did not meet CET/Gabewell's commitment to subcontract with MBE and WBE subcontractors. In addition, CET failed to fulfill its commitment that its WBE joint venture partners would conduct about half of the work performed under the contract. Finally, CET did not obtain approval by the City's Human Rights Commission when it added subcontractors, including adding non-MBE/WBE subcontractors.

The responses of the Public Utilities Commission, the Human Rights Commission, CET Environmental Services, Inc., and Gabewell, Inc., are attached to this report. The Controller's Audits Division will be working with the departments to follow up on the status of the recommendations made in the report.

Respectfully submitted,



Edward Harrington  
Controller



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# INTRODUCTION

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## BACKGROUND

The Public Utilities Commission (PUC) of the City and County of San Francisco (City) entered an agreement in August 1997 specifying that the joint venture of Sierra Environmental Services/CET Environmental Services, Inc., JV (Sierra/CET), would provide as-needed services for specialized engineering. The City's Human Rights Commission (HRC) certified Sierra Environmental Services as a women business enterprise. On April 21, 1998, Sierra Environmental Services ended its business operations. On June 24, 1998, CET Environmental Services, Inc., (CET) formed a new joint venture with another firm, Gabewell, Inc., that would enable the firms to continue providing the as-needed engineering services to the PUC. The HRC certified Gabewell as a women business enterprise. The HRC approved the new joint venture of CET/Gabewell, a Joint Venture Association (CET/Gabewell), on July 27, 1998.

Enterprises like Gabewell fulfill criteria for being a women business enterprise as listed in the Minority/Women/Local Business Utilization Ordinance (ordinance), which is part of the San Francisco Administrative Code (Administrative Code), Chapter 12D. This ordinance is intended to correct identified discriminatory practices inherent in the City's procurement processes and in the awarding of contracts to minority business enterprise (MBE) and women business enterprise (WBE) companies. The ordinance establishes various rating preferences for joint ventures that have minority-owned, women-owned, or local business enterprises as joint venture partners. A rating preference is an increase in the points awarded to a bid so that the contractor's bid is more favorable when compared to the other bids. The ordinance requires the City's contract-awarding authorities to make good-faith efforts to solicit and obtain bids from MBEs and WBEs. The ordinance also requires the City's contract-awarding authorities to encourage its contractors to make good-faith efforts to subcontract with MBEs and WBEs.

Under the ordinance, the HRC director is to keep a database, the Citywide Diversity Tracking System, to report on the progress each city department has made toward the achievement of the participation goals for MBEs and WBEs. In addition, the HRC's rules and regulations require city departments to enter in this

database accurate, complete information for their contracts on a timely basis.

To qualify as a MBE or WBE under the ordinance, a business must receive certification from the HRC, which determines whether the enterprise is an economically disadvantaged, local business that is owned and controlled by one or more minority persons or by one or more women.

The joint venture of CET/Gabewell agreed that the joint venture would perform 51 percent of the work and subcontract the remaining 49 percent. CET/Gabewell committed to subcontract 25 percent of the contract amount to MBEs and 10 percent of the contract amount to WBEs. In its contract, CET/Gabewell also agreed that Gabewell, its WBE partner, would perform 51 percent of the work that the two joint venture partners would perform. However, the joint venture agreement limited Gabewell's participation only to new work undertaken for the contract.

The PUC originally awarded a \$100,000 contract to Sierra/CET, but the PUC later increased the amount to \$540,032. The contract period for as-needed engineering services was from January 28, 1998, through January 28, 2000. During this period, the joint ventures completed all of the work detailed in the contract.

## SCOPE AND METHODOLOGY

The Administrative Code, Chapter 12D, requires the HRC director, in cooperation with the Office of the Controller, to conduct random audits of city contractors to ensure that contractors properly meet their commitments to subcontract with MBEs and WBEs. In cooperation with HRC staff, we randomly selected for audit the contract between the PUC and CET/Gabewell, a Joint Venture Association. Because the PUC originally awarded the contract to another joint venture, Sierra/CET, we also examined the payments to the first joint venture that had agreed to the contract.

Specifically, we determined whether the joint ventures met their commitment to subcontract with MBEs and WBEs in the contract with the PUC and assessed whether the MBE and WBE subcontractors performed the work. We also analyzed the accuracy and completeness of key information in the Citywide Diversity Tracking System. Our audit covered January 28, 1998, through January 28, 2000.

To conduct the audit, we verified whether the HRC had certified the designated subcontractors as MBEs or WBEs when the PUC awarded the contract. We also determined whether the joint venture had paid these subcontractors for work performed. To assess whether these subcontractors had performed the work specified, we reviewed a sample of the subcontractors' records, including vendors' invoices and work products.

Additionally, we conducted interviews with personnel of the PUC and the HRC and with staff of the MBE and WBE subcontractors to obtain information on their roles in this contract. To evaluate the information in the Citywide Diversity Tracking System, we reviewed key information that the PUC had entered in the system, and investigated any discrepancies.

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# AUDIT RESULTS

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## **CET ENVIRONMENTAL SERVICES, INC., DID NOT FULLY MEET ITS COMMITMENT TO SUBCONTRACT WITH BUSINESSES OWNED BY MINORITIES OR WOMEN**

**I**n its contract with the City's Public Utilities Commission (PUC), CET Environmental Services, Inc., did not fully meet its commitment for subcontracting with MBEs and WBEs. CET/Gabewell, a Joint Venture Association, committed to awarding 25 percent of the contract amount to MBE subcontractors and 10 percent of the contract amount to WBE subcontractors. The PUC paid the joint ventures \$544,945 for services that Sierra Environmental Services/CET Environmental Services, Inc., JV and CET/Gabewell provided under the contract. However, the joint ventures paid only \$100,296 (18.4 percent) of the contract amount to the MBE subcontractors, or \$35,940 less than the joint ventures had committed. In addition, the joint ventures paid only \$47,722 (8.8 percent) of the total contract amount to the WBE subcontractors, or \$6,772 less than the joint ventures had committed.

Under the contract there were seven task orders. By the time Sierra Environmental Services ended its business operations on April 21, 1998, Sierra/CET had performed most of the work on two task orders. When CET entered into a joint venture agreement with Gabewell, the CET/Gabewell joint venture agreement specified that CET was solely responsible for the work that was completed, in progress, or proposed, specifically including the five additional task orders that it eventually worked on. Because the PUC did not assign any subsequent task orders to CET/Gabewell, only CET was responsible for ensuring that the joint ventures sufficiently subcontracted work to MBEs and WBEs for these five task orders.

If either the PUC or the Human Rights Commission (HRC) had adequately monitored the contract while the joint ventures were conducting their work, either agency could have identified that CET would not meet the commitment for subcontracting to MBE and WBE subcontractors. The Administrative Code, Section 12D.8(E)5, which is applicable to this contract, requires the PUC to ensure that the contractor fulfills the MBE and WBE subcontractor participation commitments. The HRC is required by

its Rules and Regulations, Section III.B.6, to monitor the level of the MBE and WBE subcontractor participation commitments.

The PUC staff member who was responsible for administering this contract retired from City employment. The HRC staff members who were responsible at that time for monitoring this contract are no longer assigned to the PUC and do not recollect the details of this contract. As a result, we were unable to determine why PUC or the HRC did not properly monitor the contract.

According to CET's chief financial officer, CET no longer operates in California and does not have any records related to this contract. According to the HRC's senior contract compliance officer currently assigned to PUC, even though CET no longer operates in San Francisco, the HRC could take disciplinary action against CET for not meeting the MBE and WBE subcontractor participation commitments.

## **CET DID NOT MEET ITS CONTRACTED COMMITMENT FOR PARTICIPATION BY ITS WOMEN BUSINESS ENTERPRISE PARTNERS**

In the course of reviewing whether the joint ventures complied with subcontracting goals, we found that CET did not meet the contracted participation levels in the joint venture by its WBE partners. Specifically, the joint venture did not meet its contract commitment for its WBE joint venture partners to perform 51 percent of the work that the joint ventures would perform. In fact, CET received \$267,887 (98 percent) of the \$273,490 in payments for work conducted by Sierra/CET and CET/Gabewell, while Sierra Environmental Services received only \$2,923 (1 percent) and Gabewell received only \$2,681 (1 percent). While Sierra Environmental Services received payments for work performed on task orders, Gabewell's principal stated that she received the \$2,681 as a management fee.

Because Sierra/CET committed to Sierra Environmental Services performing at least 51 percent of the work undertaken by the joint venture, Sierra/CET received a 10 percent rating preference when the City's PUC evaluated bids for this contract. A rating preference is an increase in the points awarded to a bid so that Sierra/CET's bid is more favorable when compared to the other bids. When Sierra Environmental Services closed its operations, the PUC approved Gabewell as CET's new joint venture partner. Although CET/Gabewell committed in HRC's Form 4 (Joint Venture

Participation Schedule for MBE/WBEs) that Gabewell would conduct 51 percent of the work undertaken by the joint venture, the CET/Gabewell joint venture agreement specified that CET was solely responsible for the work that was completed, in progress, or proposed. Because the PUC did not issue any new task orders to CET/Gabewell, CET believed that it was not responsible for involving Gabewell in performing work under the contract.

In a letter to CET dated July 27, 1998, the HRC approved that CET/Gabewell would complete the contract with the provision that Gabewell would participate as specified in the HRC Form 4 and the CET/Gabewell joint venture agreement, which limited Gabewell's participation to only new work, of which there was none. Subsequently, on July 29, 1998, the PUC approved the assignment of the contract from Sierra/CET to CET/Gabewell.

However, the PUC and Gabewell each stated that of the five task orders that the PUC issued after CET/Gabewell was formed, Gabewell was qualified to participate in one task order that cost \$269,967 and more limited participation in another task order that cost \$69,184. We have not found any records that explained why Gabewell was excluded from participating in the task orders that were unissued at the time CET/Gabewell was formed. Gabewell's principal stated that CET presented Gabewell the offer to become a joint venture partner with CET and to work only on new tasks. CET's chief financial officer could not explain why Gabewell was excluded from participating in the five then-existing task orders. Current PUC staff members did not know why Gabewell did not perform any work under the contract.

Moreover, if the HRC had adequately analyzed the contract at contract completion, the HRC could have assessed whether CET/Gabewell met the commitment for Gabewell to perform 51 percent of the work. The Administrative Code, Section 12D.14(A), which is applicable to this contract, required HRC's director to issue an exit report for any contract that includes a MBE or WBE as a joint venture partner to ensure that the MBE or WBE joint venture partner actually performed services on the joint venture. According to the HRC senior contract compliance officer, the HRC's director did not issue an exit report after this contract was completed because the HRC was not informed that this contract was being closed.

According to the HRC's senior contract compliance officer currently assigned to PUC, even though CET no longer operates in San Francisco, the HRC could take disciplinary action against CET

for not meeting its commitment for the participation of the WBE partners in the joint venture.

## **THE JOINT VENTURES USED SUBCONTRACTORS THAT WERE NOT APPROVED BY THE HUMAN RIGHTS COMMISSION**

Without obtaining the approval of the HRC, the joint ventures used eight subcontractors that were not included in the eleven subcontractors listed in the joint ventures' contract with the PUC. Under the Sierra/CET agreement with the PUC, both partners were responsible for subcontracting work assigned to Sierra/CET. Under the CET/Gabewell joint venture agreement, CET was solely responsible for subcontracting work assigned to CET/Gabewell. Both Sierra/CET and CET used subcontractors that were not included in their contract. The HRC, however, prohibits city contractors from using a subcontractor that is not listed in the contract or listed on the HRC's Form 2A (Subconsultant Award Information) until the HRC has approved the change. The contract with the joint ventures also specifically prohibits the contractor from using new subcontractors without City approval. We did not find any evidence that either joint venture had obtained the approval of the HRC, or the PUC, to use subcontractors not listed in the joint ventures' contract.

## **THE PUBLIC UTILITIES COMMISSION ENTERED SOME INACCURATE INFORMATION IN THE CITYWIDE DIVERSITY TRACKING SYSTEM**

Although the PUC accurately entered most information in the Citywide Diversity Tracking System (system), we found that it did not enter the correct original contract amount and contract modification amounts. Instead of entering the original contract amount of \$100,000, the PUC staff entered \$22,000, which was the amount for one of the contract's task orders. The PUC staff also incorrectly entered the total amount for contract modifications. Instead of entering total contract modifications of \$440,032, the PUC staff entered a total of \$432,540. The PUC contract division manager stated that the incorrect information in the system was due to PUC staff's entering the task order amounts instead of the original contract amount or the actual modification amounts.

## RECOMMENDATIONS

To comply fully with the City's Minority/Women/Local Business Utilization Ordinance, the Public Utilities Commission should take the following actions:

- Require project managers to adequately monitor contracts to ensure that contractors meet their commitments to use MBE and WBE subcontractors, and inform the HRC of any deficiencies.
- Work with the Human Rights Commission to make certain that contractors obtain the HRC's approval before the contractor uses any subcontractor not listed in the PUC's contracts.
- Direct its contract administration staff to correct in the Citywide Diversity Tracking System the original contract and modification amounts so that future reports generated from the system will contain accurate information.

To fulfill the requirements of the Minority/Women/Local Business Utilization Ordinance and its Rules and Regulations, the Human Rights Commission should take the following actions:

- Require its contract compliance officers to monitor contracts to ensure that MBE and WBE subcontractors are participating in the contract to meet contracted commitments.
- Consider whether it should take appropriate disciplinary action against CET Environmental Services, Inc., for not meeting the MBE and WBE subcontractor participation commitment or the WBE joint venture participation commitment.

We conducted this review according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Staff: Bing Julian-Mantegna, Audit Manager  
Lorita Chung

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## RESPONSES TO THE AUDIT:

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### SAN FRANCISCO PUBLIC UTILITIES COMMISSION

OFFICE OF THE GENERAL MANAGER  
1155 Market Street, 4th Floor, San Francisco, CA 94103 • Tel. (415) 554-3155 • Fax (415) 554-3181



January 10, 2003

Mr. Ed Harrington  
City and County of San Francisco  
Controller's Office  
City Hall, Room 388  
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San Francisco, CA 94102

WILLIE L. BROWN, JR.  
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E. DENNIS NORMANDY  
VICE PRESIDENT

ASHOK KUMAR BHATT  
JEFFREY A. CHEN  
ROBERT J. COSTELLO

PATRICIA E. MARTEL  
GENERAL MANAGER

Dear Mr. Harrington,

The SFPUC appreciates the thorough review by the Controller's Audits Division in researching the past subcontracting history of a 1997 SFPUC contract with Sierra/CET/Gabewell for As-Needed services in specializing engineering. We concur that Sierra/CET/Gabewell did not, effectively, meet the MBE/WBE objectives.

These findings confirm that SFPUC's current, upgraded, contracting procedures -- which include diligent monitoring by Project Managers/Contract Managers of subcontractor participation, and the requirement that all HRC forms must be submitted before any payments are made -- will, in fact, promote compliance of HRC goals in future contracts.

The City has since upgraded contracting procedures that now require prime contractors to specify amounts paid to all MBEs and WBEs with each payment. This documentation allows HRC and Project Managers to immediately assess whether prime contractors are fully utilizing all the MBE and WBE firms that were promised work. In the final analysis and looking forward, the SFPUC is committed to giving maximum work allowed to MBE/WBE firms, and we will continue to demand proper documentation before payments are made. We expect all project and contract managers to exercise due diligence in enforcing contract provisions, along with HRC.

Cordially,

  
Patricia E. Martel  
General Manager

## RESPONSES TO THE AUDIT:

### City and County of San Francisco



Willie Lewis Brown, Jr.  
Mayor

### Human Rights Commission

Equal Opportunity & Minority/Women/Local Business Enterprise  
Nondiscrimination in Employment, Public Accommodations & Housing  
Lesbian, Gay, Transgender & HIV  
Youth & Education

Virginia Harmon  
Executive Director

January 8, 2003

Ben Carlick  
Audit Manager  
Office of the Controller  
City Hall, Room 388  
1, Dr. Carlton B. Goodlett Place  
San Francisco, Ca 94102

Subject: Response to Audit Report Number 01069

Dear Mr. Carlick:

Thank you for giving us this opportunity to respond to your audit report number 01069 concerning contract CS-498 As Needed Engineering Services. We agree with the findings and recommendations and will be pursuing non-compliance proceedings against CET Environmental Services.

Since the time of this audit, HRC and PUC have instituted new procedures to ensure compliance with the MBE/WBE ordinance on "as needed" contracts:

- Copies of each task order are now sent to HRC
- The task orders include a new section requiring the prime contractor to list all the subcontractors and joint venture partners that will be used, including those listed for MBE/WBE credit.
- A copy of each task order is sent to HRC.
- HRC enters the information into a spreadsheet created to track the utilization of MBEs and WBEs on the overall contract, both as joint venture partners and as subcontractors.
- Compliance letters are sent to prime consultants and to the PUC's project manager on a regular basis. In addition, HRC works closely with the project manager who is instructed to alert HRC immediately if any problems (such as the non-participation of an MBE or WBE joint venture partner) occur.
- In cooperation with the PUC and the City Attorney's Office, the following parameters have been put forward to evaluate each task order and to ensure the integrity of the City's competitive selection process:
  - a) Task orders should be under \$100,000.
  - b) Task orders should not be, nor should they be part of, a "standalone" project.
  - c) The scope of work of each task order should fall with the general scope of work of the contract as defined in the RFP.
  - d) Task assignments should be made in such a way as to ensure compliance with the contract's overall MBE and WBE goals.

In regards to other matters, HRC has created training manuals which instruct staff to routinely cross check the provisions of HRC Form 4 and the joint venture agreement.

Sincerely,

  
Diana Rathbone



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## RESPONSES TO THE AUDIT:

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### CET Environmental Services, Inc.

7032 S. Revere Parkway  
Englewood, Colorado 80112  
Telephone: (720) 875-9115  
Fax: (720) 875-9114

January 17, 2003

Mr. Ben Carlick  
Audit Manager  
Office Of The Controller  
Audits Division  
City and County of San Francisco

Dear Mr. Carlick:

CET Environmental Services, Inc. has received and reviewed your Draft Audit Report and provides the following comments concerning your findings.

The joint venture Sierra/CET would have met and exceeded the commitment to subcontract with businesses owned by minorities or women had Sierra not gone out of business. A bigger issue would have been created had CET defaulted on the contract. CET was put in a precarious position and scrambled to replace Sierra so as not to default on the contract. CET feels no disciplinary action is warranted as any deficiency was directly caused by Sierra Environmental business failure that CET had no control over.

In good faith, CET replaced Sierra with Gabewell and the HRC approved the new joint venture partner. With the negotiation of a new joint venture agreement, Gabewell did not want to assume liability with a previously negotiated contract with the PUC. The new joint venture agreement addressed this and provided for Gabewell to participate in any new contracts from that point forward. As no new contracts were obtained, Gabewell's participation was in administrative functions on the Sierra/CET contract. The PUC approved the assignment of the contract and the joint venture agreement between CET/Gabewell.

The report states that the PUC paid the joint ventures \$544,945 for services and that CET received \$267,887. The report also states that the joint ventures paid \$100,296 of the contract amount to MBE subcontractors, which was close to the minimum committed, and that the joint ventures paid \$47,722 to WBE subcontractors which was even closer to the committed amount. Again, CET was relying on the original joint venture partner to provide services to meet the commitments. With Sierra going out of business, CET made every effort to complete the contract and meet the commitments. There has never been an issue with the actual work performed.

This contract was being handled by the CET office located in Richmond, CA and CET closed this office about the same time as this contract ended. Records from 4-5 years ago are no longer available and CET cannot confirm or deny the calculations nor the history associated with this contract. CET feels that no disciplinary action is necessary as too much time has passed, the people responsible for this contract both from CET and the HRC are no longer involved and records are no longer available so there is only speculation.

Sincerely,  
CET Environmental Services, Inc.

Dale W. Bleck  
CFO

## RESPONSES TO THE AUDIT:

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### GABEWELL, Inc.

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January 20, 2003

Mr. Ben Carlick  
Audits Division, Room 388  
City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4694

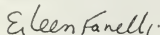
Subject: Draft Revised Audit Report of HRC Compliance Audit of PUC Contract with  
CET/Gabewell, A Joint Venture Association

Dear Mr. Carlick:

The following is in response to the above referenced audit report (report), received by my office via fax on January 10, 2003. I appreciate the opportunity to review the revised draft report.

The report accurately summarizes the relationship of Gabewell and CET with regards to responsibility for assigned project work. I concur with the findings of the report regarding Gabewell. If I can be of further assistance to you in completing your audit, please give me a call. Messages can be left on my office phone, and I can generally be reached on my cell phone (415) 350-8410.

Sincerely,



Eileen Fanelli  
Gabewell, Inc.

Gabewell, Inc.  
51 Idora Avenue, SF, CA 94127  
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cc: Mayor  
Board of Supervisors  
Civil Grand Jury  
Budget Analyst  
Public Library  
KPMG LLP  
Human Rights Commission





